

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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ZUFFA, LLC,

Plaintiff(s),

v.

DOE DEFENDANT (UNKNOWN
REGISTRANT OF UFCFIGHTPASS.NET),

Defendant(s).

Case No. 2:20-CV-2032 JCM (VCF)

ORDER

Presently before the court is the matter of *Zuffa, LLC v. Doe Defendant (Unknown Registrant of ufcfightpass.net)*, case number 2:20-cv-02032-JCM-VCF.

On November 4, 2020, plaintiff Zuffa, LLC (“Zuffa”) initiated the instant suit against a Doe defendant, the unknown registrant of an allegedly infringing website, *ufcfightpass.net*. (ECF No. 1). Plaintiff operates the website, *ufcfightpass.com*. (*Id.*). Plaintiff’s complaint alleges that an unknown individual is running *ufcfightpass.net* in an intentionally and harmfully misleading manner. (*Id.*). Indeed, the websites in question are nearly identical. (*Id.*).

Plaintiff has moved for a temporary restraining order and preliminary injunction. (ECF Nos. 4, 5). Among plaintiff’s requests is “an order requiring the registrar and/or privacy service to unmask and reveal Defendant’s actual identity, including all contact information provided by Defendant to register the <*ufcfightpass.net*> domain name so the case may proceed against an actual named Defendant.” (ECF No. 4). In other words, plaintiff asks this court to order non-parties to tell plaintiff who to sue.

This request reveals a deep flaw in plaintiff’s suit, and its briefing on this issue reveals little on why this court should allow the case to proceed. As plaintiff acknowledges, courts

1 “prefer to adjudicate matters involving actual persons rather than ‘Doe’ defendants.” (ECF No.
 2 4). For this court, adjudication against actual persons is not a mere preference. It is a
 3 requirement.

4 Plaintiff has brought this case against *only* a fictitious defendant, an unknown individual
 5 who is running ufcfightpass.net. This court and circuit have expressly disapproved of this
 6 practice. *See Craig v. United States*, 413 F.2d 854, 856 (9th Cir. 1969) (“There is no provision
 7 in the federal statutes or Federal Rules of Civil Procedure either authorizing or expressly
 8 prohibiting the use of fictitious parties.”); *Tolefree v. Ritz*, 382 F.2d 566, 567 (9th Cir. 1967)
 9 (“[This case] was also properly dismissed as to the fictitious defendants. . . . If plaintiff later
 10 ascertains the names of additional persons he wishes to join as defendants, the Federal Rules of
 11 Civil Procedure provide a way of doing so.”); *Sigurdson v. Del Guercio*, 241 F.2d 480, 482 (9th
 12 Cir. 1956) (“It is inviting disaster to . . . allow fictitious persons to remain defendants if the
 13 complaint is still of record. Appropriate action has been taken by the trial court on its own
 14 motion in some such cases.”); *see also Graziose v. Am. Home Prod. Corp.*, 202 F.R.D. 638, 643
 15 (D. Nev. 2001) (“[G]enerally, ‘Doe’ pleading is improper in federal court. . . . If there are
 16 unknown persons or entities, whose role is known, that fact should be expressed in the
 17 complaint, but it is unnecessary and improper to include ‘Doe’ parties in the pleadings.”).

18 District courts are empowered to act on their own discretion to dismiss fictitious
 19 defendants. *Id.*; *see also McConnell v. Marine Engineers Beneficial Ass’n Ben. Plans, Dist. 1--*
 20 *Pac. Coast Dist.*, 526 F. Supp. 770, 774 (N.D. Cal. 1981) (“The practice of suing fictitious
 21 defendants has been disapproved in this circuit and a district court may act on its own motion in
 22 dismissing these unnamed defendants.”). Especially where plaintiff has not offered any
 23 defendants other than its one fictitious defendant, judicial economy is served by this dismissal;
 24 possible procedural uncertainty is evaded.

25 The factually similar cases proffered by plaintiff make this court more certain of its
 26 decision. *See, eg., Hakkasan LV, LLC v. Tsang Hang Wang*, No. 2:13-CV-01122-GMN, 2013
 27 WL 3491178, at *1 (D. Nev. July 10, 2013); *LV Gaming Ventures, LLC v. M Resort Phuket*, No.
 28 2:11-CV-01552-LDG-VCF, 2012 WL 13050871, at *1 (D. Nev. Jan. 31, 2012); *Switch*

1 *Commc'ns Grp., LLC v. Banks*, No. 2:11-CV-01810-GMN, 2011 WL 5854610, at *1 (D. Nev.
 2 Nov. 17, 2011). None of these cases were leveled only against fictitious defendants, nor did
 3 courts order non-parties to reveal a defendant's identity. (ECF No. 4). Plaintiff's briefing offers
 4 no authority or guidance on this issue. (*Id.*).

5 Plaintiff cites Federal Rule of Civil Procedure 65 as the reason for why the non-parties
 6 are required to comply with an order to divulge the fictitious defendant's identity. (ECF No. 4).
 7 Plaintiff's request for an order that non-parties reveals the fictitious defendant's identity is not
 8 within that purview of that rule. Plaintiff's also cite an "inherent authority [for courts] to issue
 9 provisional remedies." (*Id.* (citing *Future Motion, Inc v. Changzhou First Int'l Trade Co.*, No.
 10 2:16-CV-00013-MMD-CWH, 2016 WL 5844317, at *4 (D. Nev. Oct. 3, 2016))). The
 11 "provisional remedy" discussed in *Future Motion* is not analogous to this issue, and furthermore,
 12 it was not granted. 2016 WL 5844317, at *4. In sum, plaintiff brings otherwise straightforward
 13 motions for TRO and preliminary injunction but shoehorns a request to require non-parties to
 14 divulge information on a fictitious defendant without speaking on the actual processes or
 15 authority to do so. As this court has already articulated, dismissal of the fictitious defendant is
 16 the most appropriate way forward.

17 The Doe defendant is hereby dismissed. In light of the lack of remaining defendants in
 18 this matter, plaintiff's claims are dismissed. However, this court grants plaintiff leave to amend
 19 in order to cure this defect. In the meantime, plaintiff's remaining motions are denied as moot.

20 Accordingly,

21 IT IS HEREBY ORDERED, ADJUDGED, and DECREED that plaintiff's claims against
 22 Doe defendant be, and the same hereby are, DISMISSED with leave to amend against an actual,
 23 not fictitious, defendant.

24 IT IS FURTHER ORDERED that plaintiff's motion for temporary restraining order (ECF
 25 No. 4) be, and the same hereby is, DENIED as moot.

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1 IT IS FURTHER ORDERED that plaintiff's motion for preliminary injunction (ECF No.
2 5) be, and the same hereby is, DENIED as moot.

3 DATED November 6, 2020.

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5 UNITED STATES DISTRICT JUDGE
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